Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK
No.

IN THE

# Supreme Court of the United States

October Term, 1996

Lawrence Wm. Jordan,

Petitioner

v.

The Governing Board of the Marin Community College District

On Petition For Writ of Certiorari To The Supreme Court of California

## PETITION FOR WRIT OF CERTIORARI
SUPPLEMENTAL APPENDIX

Lawrence Wm. Jordan,
pro se
202 Kent Ave. # 8
Kentfield, CA 94904
(415) 461-0912

43 pp

**SUPPLEMENTAL APPENDIX**

OPINIONS, ORDERS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW ENTERED IN CONJUNCTION WITH JUDGMENT SOUGHT TO BE REVIEWED

NOTICE OF DECISION TO DISMISS [CT 242; Admin Hrg Ex 1] Dated September 8, 1994

Dear Mr. Jordan:

On September 8, 1994, the Governing Board of the Marin Community College District took action to dismiss you.

The Governing Board received a recommendation from the Superintendent/President of the District that it issue you a Statement of Decision to Dismiss and Statement of Charges. The Board found that there was cause for your dismissal as an academic employee of the District, as more particularly set out in the Statement of Decision to Dismiss and the Statement of Charges.

Enclosed are the following:

1. A copy of the Statement of Decision to Dismiss and the Statement of Charges, and all attachments thereto;

2. Copies of Education Code Sections 87666-87684, 87732, and Government Code Sections 11500, 11506, 11507.5, 11507.6, 11507.7.

You are notified that you are dismissed from employment with the District effective 30 days after the date of this letter. However, should you request a hearing you will remain in paid status until a final decision is reached following the hearing. You have a right to file a written objection to the decision of the Governing Board, or the reasons therefor, which is to be delivered to said Board within thirty (30) days after this Notice and the Enclosed Statement of Dismissal is mailed to you. You may, but need not, be represented by counsel at any or all stages of these proceedings.

Your failure to request a hearing by filing a written objection within the period specified above will constitute a waiver of your right to a hearing.

You are also notified that you may request a hearing,

and the discovery authorized by Code Section 11507.6 and Education Code Sections 87675 and/or 87679 shall be available upon request by notifying the Superintendent/President in writing at the following address:

Dr. James E. Middleton
Superintendent/President
Marin Community College District
885 College Avenue
Kentfield, CA 94904

Sincerely,

s/

James E. Middleton
Superintendent/President

[CT 244]

GOVERNING BOARD OF THE
MARIN COMMUNITY COLLEGE DISTRICT

In the Matter of )
)
Lawrence Wm. Jordan )
a Regular Academic Employee )
_____)

STATEMENT OF DECISION TO DISMISS

I, James E. Middleton, Superintendent/President of the Marin Community College District, County of Marin, State of California, pursuant to the provisions of Education Code Section 87666 et seq., made a recommendation on September 8, 1994, to the Governing Board of said District that the Board take action to dismiss Lawrence Wm. Jordan, a regular academic employee of said District, and to notify Lawrence Wm. Jordan of its decision to dismiss him.

The grounds upon which this Statement of Decision to Dismiss are based are evident unfitness for service, persistent violation of or refusal to obey the school laws of the State or regulations of the board. The grounds are based specifically on the Statement of Charges, attached hereto and incorporated herein by reference thereto.

The instances of conduct contained in the Statement of

Charges, have caused disruption of the orderly administration of the community college and will negatively impact the education offered in the District.

On the basis of the foregoing, the Board of trustees has authorized that Lawrence Wm. Jordan be served with the Statement of Decision to Dismiss and Statement of Charges.

DATED: September 8, 1994.

s/ _____
Dr. James E. Middleton
Superintendent/President

[CT 246]

DECLARATION

I hereby declare under penalty of perjury that I have read the foregoing Statement of Decision to Dismiss and Statement of Charges, and am familiar with the contents thereof, and that said contents are true and correct to the best of my knowledge and belief.

Executed this 8th day of September, 1994, at Kentfield, California, County of Marin.

s/ _____
Dr. James E. Middleton

[CT 249]

BEFORE THE GOVERNING BOARD OF THE
MARIN COMMUNITY COLLEGE DISTRICT

In the Matter of )
)
Lawrence Wm. Jordan, )
a Regular Academic Employee )
_____)

STATEMENT OF CHARGES

I, James E. Middleton, Superintendent/President of the Marin Community College District charge that there exists cause to dismiss Lawrence Wm. Jordan as a permanent academic employee of the Marin Community College District for the

following reasons:

A. Evident unfitness for service (Education Code § 87732(e)); and

B. Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the community college [or, JEM] by the governing board. (Education Code § 87732(g)).

These grounds are supported by the following specific acts or omissions:

1. During the Fall 1989 semester you met Ms. Janene Frahm. At the time, Ms. Frahm was a part-time academic employee of the Marin Community College District (the College). Ms. Frahm's status with the College is that of an Eligible Temporary Credit Unit Member (ETCUM) instructor who through the collective bargaining agreement between the College and the United professors of Marin has the first right of assignment as an instructor when a position is open in her discipline, which is Communications.

2. After meeting Ms. Frahm in the Fall of 1989, you obtained her telephone number and contacted her. You and she agreed to attend an open house party. After that occasion, Ms. Frahm indicated she did not wish to see you again and asked you to stay away from her.

3. In April 1990, you wrote the University of Kansas alumni office seeking personal information about Ms. Frahm. The University informed Ms. Frahm of your request and she contacted you in order to express her dissatisfaction about this invasion of privacy.

4. As a result of this episode, Ms. Frahm contacted the College administration and complained of your behavior. In the Spring of 1990, you were verbally instructed by Mr. Lowney to leave Ms. Frahm alone and not to contact her again.

5. During the summer Summer session of 1990, you attempted to enroll in a Communications class taught by Ms. Frahm.

6. In June 1990, and for each subsequent June including June, 1994, you have sent Ms. Frahm a birthday card despite her wish, as expressed to you, that you refrain from contacting her.

7. On Valentine's Day, 1991, you sent My Frahm an unsigned Valentine which professed your love for her. The Valentine was sent to Ms. Frahm's private, non-public post office box rather than through campus mail.

8. In June 1991, you sent Ms. Frahm a birthday card at her private post office box address.

9. As a result of this incident, Ms. Frahm again complained to the Human Resources Office and filed a complaint against you. This complaint resulted in a formal letter of censure and an order that you desist from contacting Ms. Frahm. This letter was signed by the then Vice President of Academic Affairs and was dated July 11, 1991.

10. In January, 1992, you sent Ms. Frahm a notice of deposition pertaining to a law suit you had filed against the College. The notice was sent to Ms. Frahm at her home address, which is unlisted.

11. In June, 1992, you sent Ms. Frahm another birthday card at her home address. As a result of this action, Ms. Frahm notified the College and a disciplinary action was instituted against you. On October 30, 1992, the College took action to suspend you without pay for four (4) days as indicated in a letter from the then Acting Vice President of Academic Affairs.

12. During June, 1993, you sent Ms. Frahm another birthday card. As a result of this action, Ms. Frahm notified the College and a further disciplinary action was instituted against you. On August 6, 1993, the College took action to suspend you for ten (10) days without pay as indicated in a letter from Ms. Boatright.

13. In all disciplinary actions taken to date, the College has determined that you have violated the terms of the College-United Professors of Marin Collective Bargaining Agreement, College Policy 5.0004 and Education Code Section 210 et seq all of which prohibit sexual harassment. In all disciplinary matters to date, you have been put on notice that your conduct towards Ms. Frahm was not acceptable and you have been advised to refrain from further unwanted contracts with Ms. Frahm.

14. In June of 1994, you sent Ms. Frahm another birthday card. She subsequently notified the College of your continued refusal to avoid contract with her.

The undersigned declares under penalty of perjury that the foregoing is true and correct to the best of his information and belief.

Executed on September 8, 1994, at Kentfield, California.

s/ _____
James E. Middleton
Superintendent/President

[CT 252]

RESOLUTION No. 94/95-9

RESOLUTION OF THE GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT COUNTY OF MARIN, STATE OF CALIFORNIA

RESOLUTION OF DISMISSAL

IT IS HEREBY RESOLVED by the Governing Board of the Marin Community College District, County of Marin, State of California, that:

WHEREAS, on the 8th day of September, 1994, written charges and a recommendation that this Board issue a statement of dismissal to Lawrence Wm. Jordan, a regular academic employee of this District, was received from Dr. James E. Middleton, Superintendent/President;

WHEREAS, said charges constitute grounds for dismissal under the Education Code of the State of California, and it is the desire and intent of this Board to dismiss said employee based upon said charges pursuant to the recommendations received:

NOW, THEREFORE, IT IS HEREBY RESOLVED:

1. That pursuant to the provisions of Sections 87732, and 87666 et seq. of the California Education Code, Lawrence Wm. Jordan shall be given notice that he is dismissed and has the right to file a written objection to the decision of this Board, or the reasons therefor, within thirty (30) days after service of said notice upon him, pursuant to Education Code Section 87673; and

2. That said Notice of Decision to Dismiss, Statement of

Decision to Dismiss, and Statement of Charges shall be signed by the Superintendent/President for and on behalf of the Board, and shall be served personally and/or by registered mail on Lawrence Wm. Jordan.

Regularly passed and adopted this 8th day of Sept., 1994, by the Governing Board of the Marin Community College District of Marin County, California, by the following vote:

AYES, in favor of said Resolution: s/Greg Brockbank
s/Phyllis Metcalfe
s/Dale A. Fleming
s/April Post
s/C. Dillon-Knutson
s/Howard Schoof

NOES, against said Resolution:

ABSENT TRUSTEES: Barbara Dolan (JEM)

I, James E. Middleton, Secretary of the Governing Board of the Marin Community College District of Marin County, California, do hereby certify that the foregoing is a full, true and correct copy of a resolution duly adopted by the said Board at a special meeting of the Board on September 8, 1994, by the vote above stated, which resolution is on file in the office of said Board.

s/James E. Middleton
Secretary

[CT 266]

MARIN COMMUNITY COLLEGE DISTRICT

BOARD POLICY

HARASSMENT (EC 200, GC 12920)

5.0004

It is the policy of the Board to prohibit harassment of an employee, applicant or student by any District employee on the basis of race, religious creed, color, ancestry, national origin, physical handicap, medical condition, marital status, sexual preference, sex or age. Conduct of non-employees while on District property is also expected to follow these guidelines.

Specifically, employees shall not threaten or suggest, either

explicitly or implicitly, that an employee's, student's, or applicant's refusal to submit to any form of harassment will interfere or adversely affect the employee's, student's or applicant's employment, work performance, academic performance, academic status, academic progress, evaluation, wages, advancement, career development, assigned duties, hours or any other condition of employment, nor shall employees create an adverse or offensive working or academic environment.

There shall be a procedure to receive and resolve complaints concerning harassment.

Harassment includes, but is not limited to:

1) Verbal Harassment - For example, epithets, derogatory comments, jokes, or slurs on the basis of race, religious creed, color, national origin, sexual preference, ancestry, physical handicap, medical condition, marital status, sex, or age.

2) Physical Harassment - For example, physical gestures, assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sexual preference, sex or age.

3) Visual Forms of Harassment - For example, derogatory posters, notices, objects, bulletins, cartoons, or drawings on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sexual preference, sex or age.

4) Sexual Harassment - Sexually harassing conduct in the workplace or academic environment, committed by employees, is also prohibited. This includes unwanted sexual flirtations, unwanted advances or propositions, unwanted physical conduct of a sexual nature, verbal abuse of a sexual nature, sexually degrading words used to describe an individual, in the workplace, in conjunction with any work related activity, or in the academic setting.

The District shall provide training and education for all staff on the topic of harassment.

Adopted: Board of Trustees
January 12, 1988

Lawrence Wm. Jordan, pro se
P. O. Box 176
Kentfield, CA 94914-0176
Tel: 415-461-0912

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR MARIN COUNTY

| | | |
|---|---|---|
| LAWRENCE WM. JORDAN, | ) | |
| | ) | |
| Petitioner, | ) | No. 158373 |
| | ) | |
| v. | ) | ALTERNATIVE WRIT OF MANDAMUS |
| | ) | |
| MARIN COMMUNITY COLLEGE DISTRICT, | ) | |
| | ) | |
| Respondent. | ) | |

The People of the State of California
To Marin Community College District, respondent:

Good cause appearing from the verified petition for a writ of mandamus on file in this proceeding,
YOU ARE HEREBY COMMANDED, by order of this Court made on 1993 October 14 to set aside your decisions of 1993 August 06, 1992 October 30, and 1991 July 01, the the proceedings alleging petitioner Lawrence Wm. Jordan to be guilty of Sexual Harassment immediately after receipt of this writ; or
IN THE ALTERNATIVE, to show cause before this Court on 1993 November 17 at 9 o'clock a.m. in Department 2 why you have not done so.
This alternative writ and copy of petition must be served on respondent at least 15 days before the hearing on the order to show cause.
DATED: 1993 October 14

HOWARD HANSON, Clerk
By P.FAN

LET THE FOREGOING ALTERNATIVE WRIT OF MANDAMUS ISSUE.

DATED: 1993 October 14

s/ BEVERLY B. SAVITT
Judge

(SEAL)

Supp. App. 10

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR MARIN COUNTY

| | |
|---|---|
| GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT, Plaintiff, vs. LAWRENCE WM. JORDAN, Defendant. | ) No. 158791 ) ORDER SUSTAINING ) DEFENDANT'S ) DEMURRER TO ) PLAINTIFF BOARD'S ) COMPLAINT FOR ) INJUNCTION |

Defendant's demurrer to Plaintiff Board's Complaint for Injunction is granted.
Plaintiff is not the Real Party in Interest as required by CCP § 367.
Plaintiff has alleged no irreparable injury to itself from plaintiff's acts.
Plaintiff is granted 20 days to file an amended complaint.
IT IS SO ORDERED.
DATED: 1994 March 23.

s/ BEVERLY B. SAVITT
Superior Court Judge

FILED MAR 23 1994
HOWARD HANSON
MARIN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR MARIN COUNTY

[CT 138]

FILED
1-26-94
HOWARD HANSON
MARIN COUNTY CLERK

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR MARIN COUNTY

GOVERNING BOARD OF THE MARIN COMMUNITY COLLEGE DISTRICT,

Plaintiff,

vs.

LAWRENCE WM. JORDAN,

Defendant.

No. 158791

JUDGMENT

This matter came on before the court on a Demurrer to the Complaint for Injunctive Relief before the honorable Beverly B. Savitt, judge, on 1994 February 09. The demurrer was rule upon based upon the papers filed by the parties. No request for appearance and argument was made.

The court issued a Minute Order sustaining the Defendant's Demurrer and ruling that plaintiff was not the Real Party in Interest as required by CCP § 367 and had alleged no irreparable injury to itself. On 1994 March 23 the Court entered an Order Sustaining Defendant's Demurrer to the Complaint on the ground that Plaintiff was not the Real Party in Interest; Plaintiff had failed to allege any irreparable injury to itself; and granting plaintiff 20 days to file an amended complaint.

Plaintiff has not filed an amended complaint within the 20 day period allowed and the time for filing said amended complaint has now passed.

In accordance with the conclusions of law set forth in the ruling of 1994 February 09 and the Order entered 1994 March 23; and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The complaint is hereby dismissed;
2. Defendant is awarded his costs incurred herein.

DATED: JUN 03 1994

s/ Beverly B. Savitt
Judge of the Superior court

FILED
JUN 03 1994
HOWARD HANSON
MARIN COUNTY CLERK

| | |
|---|---|
| LAWRENCE WM. JORDAN, | ) |
| | ) |
| Petitioner, | ) No. 158373 |
| | ) |
| v. | ) JUDGMENT FOR |
| | ) ISSUANCE OF |
| MARIN COMMUNITY COLLEGE DISTRICT, | ) PEREMPTORY WRIT OF ) MANDAMUS ) CCP § 1094.5 |
| Respondent. | ) |

An Alternative Writ of Mandate and Order to Show Cause having issued herein on 14 October 1993 in the above-entitled matter, and the same having come before me for hearing on 17 November 1993, Lawrence Wm. Jordan, petitioner having appeared pro se and Larry J. Frierson appearing as attorney for respondent Marin Community College District; and the court having considered the proofs offered by the respective parties and having heard the arguments of respondent; and the court being fully advised in the premises; and the court finding that suspensions must be in accordance with the Education Code, and it appearing that the Board of Trustees has failed and refused to issue a final order; and it appearing that respondent has not granted petitioner a hearing before an arbitrator pursuant to the Education Code §§ 87660, 87661, 87669, 87672, 87674, 87678, 87622, 87632; and it appearing that a peremptory writ of mandate should issue and that petitioner has no plain speedy, or other adequate remedy in the ordinary course of the law;

The other issues raised in the petition are moot and the court makes no determination at this time;

IT IS ORDERED that a Peremptory Writ of Mandate in due form be issued requiring respondent to set aside its decisions of 1993 August 06, 1992 October 30, and 1991 July 01; this matter is hereby remanded to respondent Marin Community College District for such further proceedings as required in accordance with this judgment and the Peremptory Writ of Mandate.

The award of costs and damages is held in abeyance pending the conclusion of proceedings below.

DATED: Jan 26 1994

s/ Beverly B. Savitt, Judge

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FILED
MAY 5 1995

HOWARD HANSON
MARIN COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN
APPELLATE DIVISION

| | |
|---|---|
| LAWRENCE WILLIAM JORDAN,<br><br>Plaintiff/Respondent,<br><br>v.<br><br>MARIN COMMUNITY COLLEGE DISTRICT,<br>Defendant/Appellant. | )<br>)<br>) No. 160304<br>)<br>)ORDER AFTER<br>) HEARING<br>)<br>)<br>) |

This case is an appeal of a Municipal Court judgment, following a grant of a motion for summary judgment in favor of respondent district. Petitioner was order to pay sanction.

This court finds that in ordering the summary judgment for respondent, the trial court erred in finding that respondent lawfully terminated appellant from his position as coordinator pursuant to Education Code, Section 87484. From respondent's own evidence supporting summary judgment, it appears that the decision to terminate appellant's extra assignment was made by administratives and not by the district's "governing board," as required by the plain meaning of Section 87484.

The trial court further erred in finding, as a matter of law, that respondent, "lawfully disciplined plaintiff pursuant to the applicable collective bargaining agreement." Section 8.3.6 of the agreement is at least ambiguous as to whether determinations of "failure to produce the final outcome or product at a time specified ... " must be made by the Union-District Workload Committee ("UDWC"). The record clearly shows that the UDWC made no such finding. The reference to portions of the collective bargaining agreement contain no indication that the acting vice-president of planning and development was authorized to make the determinations instead of the UDWC. Moreover,, section 8.3.6 only provides for repayment of compensation where the individual has actually "failed to produce the final outcome or product at the time specified." Portions of respondent's own evidence, as well as appellant's evidence, raise a triable issue of fact as to whether appellant had substantially complied with requirements of his

position by the end of December 1991 as "fact" 23 was not established, respondent failed to show as a matter of law, that "plaintiff did not perform the services or work and labor for which he was compensated." Thus, respondent also did not defeat appellant's cause of action for money had and received.

Finally the trial court erred in not issuing an order specifying the supporting evidence, as required by Code of Civil Procedure, Section 437c, subd. (g).

This court finds that the trial court did not err in ordering appellant to pay $250 in sanctions for failure to appear at his deposition.

The judgment entered upon a grant of summary judgment is reversed. The case is remanded to Municipal Court for trial. The trial court's order requiring appellant to pay $250 in sanction is affirmed.

Dated: 27 April 1995

s/ _____
LYNN O'MALLEY TAYLOR
Judge of the Superior Court
Appellant Division

s/ _____
RICHARD H. BREINER
Judge of the Superior Court
Appellate Division

s/ _____
MICHAEL B. DUFFICY
Judge of the Appellate Court
Appellate Division

[CT 344]

BEFORE THE GOVERNING BOARD OF THE
MARIN COMMUNITY COLLEGE DISTRICT

| | | |
|---|---|---|
| In the Matter of the Accusation Against: | ) | |
| LAWRENCE JORDAN, | ) | OAH No. N 9411146 |
| Respondent. | ) | |

_____)

DECISION

Stewart A. Judson, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on February 21 and 22, 1995, at San Rafael, California.

Margaret M. Merchat, Attorney at Law, represented the Complainant.

Lawrence W Jordan represented himself.

Submission of the matter was deferred to March 17, 1995, for receipt of written argument which was duly received and marked for the record. On March 28, 1995, the respondent moved to supplement the record. The complainant filed a letter of opposition to said motion on April 5, 1995. After reviewing the arguments of both parties, the administrative law judge denied respondent's motion on April 17, 1995. The matter was deemed submitted as of said date.

FINDINGS OF FACT

I

Lawrence W. Jordan (respondent) is a full time permanent certificated employee of the Marin Community College District (the District).

II

On September 8, 1994, James E. Middleton, the Superintendent and President of the District, recommended to the Governing Board that it dismiss respondent for evident unfitness for service and persistent violation of or refusal to obey the school laws of the State or regulations of the Board. Notice of this recommendation was provided respondent.

III

On September 8 1995, the Governing Board resolved to dismiss respondent based upon the recommendation of the Superintendent.

IV

Respondent requested a hearing.

V

Respondent has an undergraduate degree in chemistry [sic], a MS Degree in chemistry [sic] and the Ph.D. in chemical engineering. He attended law school at U.C.L.A. from 1968 to 1971 where he received his LL.B. [sic] He joined the District July 1, 1989.

VI

Janet [sic] Frahm started working in the District in the fall of 1981 in a .4 FTE[1] position. She continued the following spring semester and left shortly thereafter. She returned in the spring of 1989 and continued working through the summer of 1993 in less than a 1.0 FTE position. She was an instructor in the Speech Department. The evidence shows she was a part time academic employee of the District. Her status is that of an Eligible Temporary Credit Unit Member instructor. As such, she has the first right of assignment as an instructor when a position opens in her discipline.

VII

Respondent met Frahm in 1989. They attended an open house party. Thereafter, Frahm told respondent she wanted no contact from or with him. In 1990, Frahm learned that respondent had contacted her Alma Mater seeking information about her. Frahm told respondent she considered this an invasion of her privacy. Frahm complained to the College about respondent's conduct.[2]

VIII

In June 1991, respondent sent Frahm a belated Happy Birthday post card which he obtained in New Zealand but mailed from North Bay, California. Frahm was upset at receiving this card from someone whom she told not to contact her. She reported the incident to a College vice-president.

IX

By letter dated July 19, 1991, the vice-president of Academic affairs notified respondent that he was censured for

[1] Full time equivalent.

[2] These findings are not made for purposes of disciplinary action but rather to explain some of the background of this matter and to show respondent's knowledge of Frahm's feelings toward him.

violating Article 24.2 of the collective bargaining agreement between the District and the United Professors of Marin. Respondent was notified that further unwanted contact with Frahm would result in a suspension without pay.

X

On January 2, 1992, respondent sent Frahm two letters informing her he had sued the District over a finding he had engaged in sexual harassment and desired to take her deposition. He asked her to contact him and advise whether she would appear voluntarily and which days would accommodate her schedule.

One letter was sent to Frahm's street address. The other was sent to her Post Office Box number. Frahm became upset when she realized respondent knew both addresses. She felt as though respondent was "tracking" her. She cried, became nervous and experienced "shakes." Frahm sought the advice of friends. She called the Union.

XI

In June 1992, respondent sent Frahm another post card from North Bay. The picture on the front of the card was of a cat. Respondent wrote "Happy Birthday, Larry" on the reverse side. The card was sent to Frahm's street address. Frahm became upset and contacted the College.

XII

By letter dated October 30, 1992, the acting vice-president of academic affairs notified respondent of his suspension for four days without pay for a second violation of Article 24.2 of the collective bargaining agreement. Respondent was also notified any further unwanted contact with Frahm would result in a ten day suspension without pay. Article 24.2 authorizes disciplinary action against members of the United Professors of Marin for engaging in discrimination/harassment.

XIII

In June 1993, respondent sent Frahm a birthday card from San Francisco to her street address. Frahm became angry, disgusted scared and worried. The card depicted a smiling girl on the front with the following words:

"Whatever makes you smile most ..."

Inside, the card reads:

"... is what I hope you'll do today. Happy Birthday"

The card is signed:

"Larry"

XIV

By letter dated August 6, 1993, the vice-president of academic affairs notified respondent that he was suspended without pay for ten days. Respondent was also informed that further unwanted contact with Frahm would result in additional penalties.

XV

On June 25, 1994, respondent sent a birthday card to Frahm at her street address. The front of the card depicted a bird in flight, stars, flowers, the sun, balloons, a rainbow and hearts. The words "Success, Joy, Friendship, Health, Smiles, Happiness and Love" also appeared. The stamp on the envelope read "Love" and depicted a heart.

The interior of the card read:

"Many wishes to you for a truly memorable year Happy Birthday"

Handwritten was the following:

"Thanks for your assistance Larry"

XVI

Frahm had no idea what the reference to "assistance" meant. She became angry, disgusted and upset. Once again, she spoke to college administrators and friends.

XVII

Respondent sent to Frahm's street address an empty envelope on September 13, 1994. The envelope bore his return address and the statement:

"DO NOT FORWARD

Address correction requested."

XVIII

Before September 13, 1994, Frahm had moved to a new location. This address was not listed in a telephone book. Her former landlord contacted Frahm to advise her of the delivery. When Frahm obtained the envelope from her former landlord, she was shocked. She did not understand why it was empty. Feelings of being "tracked" recurred.

XIX

As a result of these unwanted contacts, Frahm found herself constantly looking out for respondent's presence on the campus. On one occasion during the 1993 summer session, she saw respondent walking in front of her. Frahm jumped behind a tree and made her way to her car by sneaking behind other vehicles. She observed him staring at her during meetings which made her feel uncomfortable. She refused to attend some meetings fearing respondent might be present.

On one occasion, she was required to attend a two day meeting on diversity. When she learned respondent would be present, she sought support from the administration. The District assigned a male to accompany Frahm throughout the two day session. Frahm sat in the back of the room to avoid the possibility of respondent staring at her.

Frahm has altered her life style to avoid being in respondent's presence. She ceased attending college functions and limits giving information about herself to others. She leaves in-service training meetings if respondent is present. She does not disclose her current street address. She reveals her Post Office box only to those from whom she wishes to receive mail.

XX

Frahm has taken action to keep her records confidential. The evidence shows respondent obtained Frahm's former street address by searching through the voter registration files. Frahm took steps to close her voter registration information when she moved.

XXI

Respondent filed a grievance against the District after imposition of his suspensions and sought arbitration

unsuccessfully. Thereafter, respondent filed a mandate action in the Superior Court, County of Marin, against the District under Code of Civil Procedure section 1094.5 for money judgment, costs, sanctions, restitution and a declaration that the District's acts are void.

On December 10, 1993, the Court, citing Education Code sections 87672 and 87674, ordered that respondent is entitled to receive a written statement of decision from the Governing Board and, if requested, arbitration.

On January 25, 1995, the Court issued a ruling observing, inter alia, that the action should have been brought under Civil Code of Procedure section 1085. The Court further noted it had directed the District to conduct further proceedings in accordance with provisions of the Education Code relating to suspensions. The Court specifically did not find that the suspensions imposed against respondent were improper or invalid.

XXII

Respondent asserts that the District's failure to comply with Education Code sections governing the suspension of certificated employees led him to engage in the conduct vis-a-vis Frahm as found hereinabove. He explains he was simply seeking to preserve his claim against the District to move on his request for arbitration. In other words, Frahm was merely a means to an end.

XXIII

Although respondent asserts he probably became aware in 1993 that Frahm thought he was "a pain," it is clear he was aware as early as 1989 she did not want any contact with him.

XXIV

Respondent has life time secondary credentials in mathematics, physics, chemistry, biology and social sciences and community college credential in engineering. He has taught courses in engineering drawing, circuit anatomy [sic], material science, statistics, computer science, physics, mathematics and chemistry.

XXV

Respondent worked for Standard Oil from 1960 to 1967 and did research [sic] in community relations at U.C.L.A. He

was employed at Aerojet General from 1967 to September 1968. After his graduation from law school in 1971, he moved to Oregon where he was in private practice and also served as a City Attorney and Assistant Director of the Building Codes Division for the State of Oregon. He was disbarred in Oregon and moved to California in 1989.

XXV!

Governing Board policy No. 5.0004 prohibits harassment of an employee by any District employee on the basis of race, religious creed, color, ancestry, national origin physical handicap, medical condition, marital status, sexual preference, sex or age. Paragraph 4 of Section 5.0004 states:

> "Sexual Harassment- sexually harassing conduct in the workplace or academic environment, committed by employees, is also prohibited. This includes unwanted sexual flirtations, unwanted advances or propositions, unwanted physical contact of a sexual nature, verbal abuse of a sexual nature, sexually degrading works used to describe and individual, in the workplace, in conjunction with any work related activity, or in the academic setting."

DETERMINATION OF ISSUES

SEX HARASSMENT

I

Education Code section 212.5 defines "sexual harassment."[3] Education Code section 220 proscribes such conduct in educational institutions in California. Government Code section 12940 bars sex discrimination in the workplace

[3] The relevant portion states:

> For purposes of this chapter, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:
>
> (c) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

when the complained of conduct creates a hostile or offensive environment (Fisher v. San Pedro Peninsula Hospital 214 Cal.App.3d 590 [1990], review denied).

If a preponderance of the evidence shows that unwelcome conduct linked to sex has occurred, and that this conduct was either sufficiently severe or sufficiently pervasive that, for a reasonable female employee, the conduct would created an intimidating, hostile, or offensive environment or otherwise interfere with the employee's emotional well-being, the conduct constitutes sex (gender) discrimination, and a violation of the Education Code section 220 within the meaning of Section 212.5(c) and Government Code section 12940 is proven (Fisher, supra; Rojo v. Kliger 52 Cal.3d 65, 73 [1990]).

II

When evaluating a sex discrimination claim, a reasonable employee is one of the same sex as the complainant (Fisher, supra at page 609, fn. 7; Ellison v. Brady 924 F.2d 872, 878-879 [9th Cir. 1991]).

III

In this matter, the District alleges that Frahm suffered unwelcome conduct linked to her sex that denied her the benefit of a work environment free of harassment. The evidence established a pattern of unwanted contact over a four year period. Respondent does not dispute that he sent the cards and empty envelope. He argues, however, that this conduct was not sexual. Although his sending of birthday cards was neither explicitly sexual nor given to the exclusion of others, Frahm did not know this at the time and reasonably interpreted these cards to be personal to her.

Additionally, some of respondent's behavior was focused on Frahm alone. His attempts to discover her residence address after she moved and his thanking her for her assistance were clearly directed at her. All of respondent's conduct occurred after Frahm had told him she wanted nothing to do with him. The evidence shows Frahm did nothing to communicate to respondent she had any personal interest in him or that she welcomed his attention. Respondent's conduct may not have constituted sexual harassment per se, but it clearly was harassment based upon gender.

Furthermore, respondent's obsessive conduct defies logic in the absence of a reasonable explanation. His stated

reason, that Frahm was simply a means to an end, is simply unpersuasive. Respondent pursued legal action against the District and has thus far prevailed. His conduct toward Frahm was juvenile and immature. Considering respondent's intellectual achievements and success, the only inference that arises is that his unwanted conduct constituted harassment based upon Frahm's gender.

IV

Respondent urges that his conduct falls under the umbrella of First Amendment and academic freedom principles but cites no authority for the proposition that concepts of academic freedom insulate all conduct from scrutiny under Education Code sections 212.5 and 220 and Government Code section 12940.

V

Courts have recognized two types of sex discrimination under state and federal law. These include claims of "quid pro quo" harassment and harassment created by a "hostile environment" (Meritor Savings Bank v. Vinson, 477 U.S. 57 [1986]; Ellison, supra). The hostile environment complaint may arise where unwelcome conduct unreasonably interferes with an individual's job performance or creates an intimidating, hostile or offensive working environment even if it does not lead to tangible or economic job consequences (Fisher, supra; Meritor, supra; Hicks v. Gates Rubber Co., 833 F.2d 11406 [sic], 1413 [10th Cir. 1987). Having concluded that respondent's conduct constituted unwelcome gender-based harassment of Frahm, the next analytical step is to decide whether the conduct created a hostile work environment.

VI

Fisher looks to the totality of the circumstances in determining whether the conduct is sufficiently pervasive or severe to create such a hostile environment. Factors to be considered are: the nature of the unwelcome conduct, the frequency of the offensive conduct, the total time over which the behavior occurred and the context in which the conduct occurred (Fisher, at p. 610).

The evidence shows there were no touching incidents. However, the evidence also shows that respondent was aware, from the beginning, of Frahm's desire that he have nothing to do with her. The incidents took place over a four year period. In

one instance, respondent went out of his way to discover Frahm's new address by sending to her former residence an empty envelope with the notation: DO NOT FORWARD-Address correction requested. Fisher disallows "trivial," "isolated," "sporadic," and "occasional" incidents. The conduct must be "severe" or "pervasive."

The most important factor under Fisher is not the incidents themselves but rather the context in which they occurred. Respondent and Frahm were colleagues on the District's faculty. The evidence shows respondent had no responsibility for offering employment opportunities to Frahm or supervising her work.

The creation or existence of a hostile, intimidating or offensive work environment due to harassment that is gender based deprives the victim of a discrimination-free work environment. Consequently, an employee who is forced to work in such an environment need not prove loss of any tangible job benefit (Government Code section 12940(h); Meritor, supra; Fisher, supra).

The context in which respondent's harassing conduct occurred clearly created an abusive work environment for a reasonable female employee. Frahm's emotional well-being was negatively impacted by respondent. She felt stalked. She went out of her way to avoid respondent on the campus, sought protection from him when attending in-service meetings and even relocated in the hope he would not discover her new address.

The evidence shows Frahm's reaction to respondent's conduct was real and reasonable and not out of proportion to the nature of respondent's conduct. The evidence demonstrates that respondent's conduct would have rendered a reasonable female employee's work environment sufficiently intimidating, hostile or offensive so as to interfere seriously with her emotional well-being.

The United States Supreme Court, in Harris v. Forklift Systems, 510 U.S. ___ (1993), in a Title VII case, held that the conduct in question need not seriously affect a plaintiff's psychological well-being or lead a plaintiff to suffer injury. The Court further held that "so long as the environment would reasonably be perceived, and is perceived, as hostile or abusive ... there is no need for it also to be psychologically injurious." The Court concluded that "while psychological harm, like any other relevant factor, may be taken into account, no single factor

is required."

Respondent's conduct was sufficiently severe or pervasive to create a hostile or offensive work environment for Frahm.

VII

The totality of the circumstances demonstrate that respondent engaged in harassing conduct toward Frahm because of her gender. Such conduct constitutes unlawful sex discrimination.

RULES AND REGULATIONS

VIII

The District claims respondent has persistently violated or refused to obey the school laws of the State and regulations of the Board. Respondent argues that the contract between the District and the United Professors of Marin is not a rule or regulation of the Board.

IX

A fair reading of Article 24.2, et seq. of the contract between the District and the United Professors of Marin clearly indicates the broad scope given to proscribed discriminatory/harassment conduct. Any form of sex (gender) based harassment which has a substantial adverse effect on the work environment denies the "full and equal services" guaranteed under the Unruh Act (Civil Code section 51), Education Code section 220 and Government Code section 12940 and is included within the contract as disciplinable conduct.

X

Government Code sections 3540.1, 3543.2, 3543.3 and 3546 govern union organizational security agreements (Moreno Valley Unified School District v. Public Employees Relations Board 142 Cal.App.3d 191 [1983]). Section 3540.1(h) provides that a contract between the exclusive representative and the public school employer shall be binding upon both parties (see also Glendale City Employees' Assn., Inc. v . City of Glendale 15 Cal.3d 328, 337 [1975] and San Lorenzo Education Assn. v. Wilson 32 Cal.3d 841 [1982]).

XI

In Bourland v. Commission on Professional Competence 174 Cal.App.3d 317 [1985], the Court overruled the dismissal of a teacher who had persistently refused to obey her principal's repeated directions to write a performance objective. The teacher's dismissal was sought under Education Code section 44932(a)(7).[4] The genesis of the dispute arose under a collective bargaining agreement which provided:

> The primary basis for Bargaining Unit member performance evaluation shall be the results achieved based upon objectives which have been mutually established by the Bargaining Unit member and his/her supervisor. When conflict arises between the Bargaining Unit member and the immediate supervisor as to reasonable student growth or reasonable Bargaining Unit member work performance expectations, the immediate supervisor's decision shall prevail.

Bourland disagreed with her supervisor's assessment that she was deficient in two particular areas and repeatedly refused to submit objectives in these areas as requested. The Court, stating "We do not see how the mere expression of the existence of 'conflict' can constitute a violation of the collective bargaining agreement," held the teacher's dismissal resulted from her disagreement with her principal and not from any violation of the contract thereby clearly implying that the contract was, indeed part of the district's regulations.

XIII

Statutory and case law make it clear that contracts between a bargaining unit and a board are binding on the parties and constitute rules and regulations of the adopting board.

XIV

The evidence demonstrates that respondent persistently violated Education Code section 220 and persistently violated Article 24.2 of the collective bargaining agreement and Board Policy No. 5.0004.

EVIDENT UNFITNESS FOR SERVICE

XV

[4] Identical to Section 87732(g).

"Evident unfitness for service" has been defined as conduct that renders the teacher "unfit to teach" (Morrison v. State Board of Education 1 Cal.3d 214 [1969]; Oakland Unified School District v. Olicker 25 Cal.App.3d 1098 [1972]). In Palo Verde School District v. Hensey 9 Cal.App.3d 967 (1970), the court construed the phrase according to its common and approved usage, i.e., one who has clearly demonstrated he or she is unsuitable, incompetent, incapable or not adapted for a particular service or use is evidently unfit for service.

XVI

Morrison delineates those criteria which determine unfitness. A careful and reasoned inquiry of the Morrison criteria must be made based upon all of the evidence before determining whether a teacher is unfit to teach (Board of Education v. Commission on Professional Competence 102 Cal.App.3d 555 [1980].

XVII

The Morrison criteria are:

1. The likelihood that the conduct adversely affected students or colleagues.

The evidence certainly demonstrates that Frahm, a colleague, was adversely affected by respondent's conduct. She became emotionally upset and sought numerous ways to avoid respondent on campus. She asked the District to assign someone to accompany her to an in-service meeting which she and respondent attended. Furthermore, the evidence also shows that respondent's conduct adversely affected the school administration which was required to spend much time and effort attempting to resolve the problem when Frahm brought it to their attention.

2. The degree of such adversity expected.

The evidence shows the extent to which Frahm was affected. Aside from bringing the matter to the attention of the administration, she relocated to avoid receiving further mail from respondent and sealed her address in the voter registration files of Marin County.

3. The proximity or remoteness in time of the conduct.

Respondent engaged in the unwanted conduct during

each of the four years immediately preceding the charges against him. The evidence demonstrates a pattern of continuous conduct during this four year period which shows its proximity to the charges.

4. Extenuating or aggravating circumstances.

The evidence shows absolutely no extenuating circumstances. Respondent's explanation, to wit: that Frahm was merely a means to force the District to comply with his demands, is a sham. Respondent had already taken legal action against the District. He was well aware of Frahm's expressed desire to have nothing to do with him. He went out of his way to obtain her address after she moved in 1994. All of these factors show the aggravating nature of his conduct.

5. The praiseworthiness or blameworthiness of the motives resulting in the conduct.

Respondent's motives completely lack praiseworthiness. The evidence of his blameworthiness is overwhelming.

6. The likelihood of recurrence.

Given the extended period of time over which respondent's conduct occurred despite repeated direction from his supervisors to cease and desist, and noting that the last incident occurred on September 13, 1994, just two weeks and one day [sic] before [sic] the filing of the charges against him, it is not only likely but probable that respondent's conduct would recur. This is borne out by his repeated refusals to correct his behavior and his refusal to recognize the true nature of his conduct.

7. The extent to which disciplinary conduct may inflict an adverse or chilling effect upon the constitutional rights of the teacher involved or others.

Respondent urges that his conduct involved First Amendment rights and that an adverse decision in this matter will have a chilling effect upon the rights of others.

A public employee may not be dismissed from his employment for the exercise of constitutional rights absent a showing that the restraints which the employing body would impose on those rights are justified by a compelling public interest (Bekiaris v. Board of Education 6 Cal.3d 575 [1072]).

Considering the finding that respondent engaged in unlawful conduct, it is difficult to discern how disciplinary action will have a chilling effect on his First Amendment rights. It is also difficult to discern how other faculty members could perceive a chilling effect upon their First Amendment rights when a colleague has been harassed as Frahm has been. Any extent to which disciplinary action may inflict an adverse or chilling effect upon the constitutional rights of others is negligible.

XVIII

The type of teaching credential held by respondent was given no consideration. Not all Morrison criteria need be considered in determining whether respondent is unfit to teach (West Valley Mission Community College District v. Concepcion, 16 Cal.App.4th 1766, 1777 [1993]; Governing Board v. Haar, 28 Cal.App.4th 369, 384 [1994])

XIX

In Woodland Joint School District v. Commission on Professional Competence 2 Cal.App.4th 1429 (1992), the Third District concluded that the legislature intended "evident unfitness for service" to refer only to acts resulting from a "defect in temperament." The court did not define "defect in temperament" except that it refers to conduct that ordinarily could not be corrected within the statutory warning period given to teachers who commit acts of unprofessional conduct.

XX

It is determined that respondent's conduct falls within seven of the eight Morrison criteria demonstrating his unfitness to teach. The evidence shows respondent was aware that his conduct was unwanted and had an adverse effect upon Frahm. His failure to correct his conduct can only be traceable to a temperamental defect. He continually refused to recognize constituted authority and obstinately committed insubordination. It is determined that respondent was unable or unwilling to remedy his unacceptable conduct that adversely affected Frahm. This conduct constitutes unfitness to teach under any of the definitions propounded by the courts. The evidence shows respondent's retention in the District "poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher" (Morrison, supra; Olicker, supra).

XXI

Respondent's conduct constitutes evident unfitness for service. Cause for disciplinary action exists under Education Code section 87732(e).

XXII

Respondent persistently violated and refused to obey the school laws of the state and reasonable regulations prescribed by the governing board of the district. Cause for dismissal exists under Education Code section 87732(g).

XXIII

Respondent's motions for sanctions and to dismiss the accusation are denied.

ORDER

1. Lawrence W. Jordan shall be dismissed from his certificated position with the Marin College Community District under Determination XXI and XXII, separately and jointly.

2. This Decision is effective upon service on the parties.

DATED: June 7, 1995

s/_____
STEWART A. JUDSON
Administrative Law Judge
Office of Administrative Hearings

[CT 387]

FILED NOV 6, 1995
HOWARD HANSON
MARIN COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

| | |
|---|---|
| LAWRENCE WM. JORDAN, | ) |
| | ) |
| Petitioner, | ) No. 164356 |
| | ) |
| v. | ) |
| | ) DECISION ON PETITION |

| | |
|---|---|
| STEWART A. JUDSON,<br><br>Respondent.<br><br>and THE GOVERNING BOARD OF MARIN COMMUNITY COLLEGE DISTRICT,<br><br>Real Party in Interest. | ) FOR WRIT OF MANDATE |

The court has reviewed and considered all documents submitted, including the Administrative Record, as well as arguments of the parties.

The court finds petitioner's position to be persuasive that respondent did not comply fully with all of the intricacies of Title V, various regulations, and certain provisions of the Education Code. If the court is to place form over substance, petitioner might prevail in his technical arguments.

At the trial level, this court finds substance to prevail over form. The lack of technical compliance with all of the provisions of the Education Code and other regulations subsequently ferreted out by petitioner do not give a basis for his writ of mandate. This is especially true when the court considers the particular choice of procedure taken by respondent.

The court finds that petitioner was afforded due process, was fully aware of the charges and received a fair hearing. There was substantial evidence to support the charges that justified petitioner's dismissal.

Upon exercise of its independent judgment, the court likewise finds that the evidence supports the charges that justifies petitioner's dismissal.

Petition for writ of mandate is denied.

Dated: November 6, 1995.

s/ _____
GERALD E. RAGAN
JUDGE OF THE SUPERIOR COURT

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

[Filed July 26, 1996]

DIVISION ONE

| | |
|---|---|
| LAWRENCE W. JORDAN,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>GOVERNING BOARD OF MARIN COMMUNITY COLLEGE DISTRICT,<br><br>Defendant and Respondent. | A072322<br><br>(Marin County Super. Ct. No. 164356) |

Lawrence W. Jordan was dismissed from his faculty position with the College of Marin (College) by the Marin Community College District (District) because his sexual harassment of a fellow instructor constituted unfitness for service and demonstrated a persistent refusal to obey laws and regulations proscribing harassment. (Ed.Code, § 87732, subds. (e) and (g) [now, subds. (d) and (f)].)[5] The District's decision was upheld by Administrative Law Judge Stewart A. Judson, after a full hearing on the matter. Jordan petitioned for a writ of mandate to compel reversal of the decision and the superior court denied the petition after reviewing the administrative record. On appeal, we affirm the lower court's order denying the petition, finding sufficient evidence to support Jordan's dismissal and no lapse of due process.

I. DISCUSSION

Our review of the trial court's denial of Jordan's petition for administrative mandate is limited to determining whether substantial evidence supports the trial court's findings, which it reached through its independent review of the evidence admitted at the administrative hearing. (*O'Connor v. State Teacher's Retirement System* (1996) 43 Cal.App.4th 1610, 1620; § 87682.) As a preliminary matter, Jordan denies that the trial court ever made an independent review of the administrative hearing evidence. But the trial court expressly stated that it reviewed all documents submitted to it, including the administrative record, and exercised its "independent

[5] All further statutory references are to the Education Code, unless otherwise indicated.

judgment" in finding the evidence sufficient to support Jordan's dismissal. The trial court did not itself articulate specific findings but it effectively adopted the findings of the administrative law judge which, we too, find to be supported by the evidence.

A. Substantial Evidence Supports the Finding That Jordan Engaged in Sexual Harassment, Persistently Refused to Obey Rules Proscribing Such Conduct, and was Unfit for Service as an Instructor.

California prohibits sexual harassment in employment and educational institutions, declaring it a form of sexual discrimination. (§§ 200, 212.5, 212.6, 230, subd. (d); Gov. Code § 12940, subd. (h)(1).) Federal law also forbids sexual harassment. (42 U.S.C. § 2000e-2, subd. (a)(1); *Meritor Savings Bank v. Vinson* (1986) 477 U.S. 57, 63-67.) The collective bargaining agreement between the District and its instructors likewise prohibits sexual harassment. Consistent with these legislative edicts and its union obligations, the District has an express policy prohibiting its employees from sexually harassing students or fellow employees, so as to prevent "an adverse or offensive working or academic environment." The administrative law judge found that Jordan sexually harassed Janene Frahm, a fellow employee, and that Jordan's conduct was "sufficiently severe or pervasive to create a hostile or offensive work environment for Frahm." The evidence supports that finding.

1. Evidence presented at the administrative hearing.

Jordan is a former [sic] lawyer and joined the College faculty as an engineering and science instructor in 1989. Frahm is a speech communications instructor. She was a temporary, periodic employee of the College, and worked there during numerous semesters from 1981 to 1982 and 1986 to 1993, and had employee status through 1994. [sic]

Jordan and Frahm met in the fall of 1989 and dated once by attending an open house party together.[6] Soon after the party, Frahm wrote a note to Jordan saying she did not want any further involvement with him. Jordan did not accept the rebuff but instead wrote to Frahm's alma mater in April 1990, attempting to get personal information about her. Frahm learned of the attempt and expressed her displeasure to Jordan. She also complained to the College of Jordan's behavior and the College asked him to leave Frahm alone.

Ignoring the request, Jordan sat in on a class Frahm was teaching in the summer of 1990, and asked the registrar about

[6] As did the administrative law judge, we mention early events to provide a background while respecting the rule precluding reliance on "charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice." (§ 87680.)

enrolling in the class. Jordan also mailed a Valentine's Day card to Frahm's post office box in February 1991, professing his love for her. Jordan further ignored Frahm's and the College's pleas that he not contact her by sending June birthday cards to her every year from 1991 to 1994. Frahm had never told Jordan her birthday, only that it was in the latter part of June, and had never given Jordan her mailing or home address.

The birthday messages began in July 1991, when Jordan sent a postcard of New Zealand caves to Frahm's post office box, mailed from California, with the handwritten greeting "Belated Happy Birthday. Hope you find who/what you want in life." Frahm was upset to receive the unwelcome contact and informed the College. The College [sic] formally censured Jordan for sexual harassment and warned him that further communication with Frahm would be punished with suspension from teaching. Frahm's sexual harassment complaints were reported in local newspapers in October 1991 when Jordan was running for the College Board of Trustees.

Jordan sued the College over its disciplinary finding and wrote to Frahm in January 1992, asking her to contact him to arrange her deposition. Jordan mailed letter both to Frahm's post office box and to her street address. Frahm was "scared" and "extremely upset" to realize that Jordan had "somehow tracked down" her home address. She cried and shook upon receiving Jordan's letter at home, and worried about how he obtained the information and whether he had learned other personal information about her. She "felt stalked" and "harassed" and was concerned about her "safety and well being." She asked the College teachers' union for help.

In June 1992, Jordan mailed a postcard to Frahm's home address, depicting a bob cat and inscribed "happy birthday." Frahm was upset at receiving another unwelcome communication from Jordan and notified the College. The College [sic] suspended Jordan without pay for four days, and warned him that further harassment of Frahm would result in a longer suspension.

In June 1993, Jordan mailed a birthday card to Frahm's home address. The card shows a smiling person and reads "Whatever make you smile most ... is what I hope you'll do today. Happy Birthday!" As with the other cards, it was signed "Larry." Frahm was "angry," "upset," "scared" and "worried" by Jordan's recurrent contacts at her undisclosed home address. She felt "very spooky" that Jordan "was out there tracking down information about [her]." Frahm again notified the College and Jordan was again disciplined. This time, Jordan was suspended for 10 days without pay.

In December 1993, the College sought an injunction against Jordan and submitted Frahm's declaration attesting that

she had altered her life because of Jordan's unwanted contacts. She stated that she "ceased attending college sponsored functions because [she did] not want to be in the same room as him" and "had to be careful not to reveal information to third parties" because she feared Jordan would learn the information.

In June 1994, Jordan mailed yet another birthday card to Frahm's home address. The card, posted in Utah, bears a "Love" postage stamp. It depicts seven images on the cover, including a rainbow, balloons, and hearts, each corresponding to the phrases "Success," "Love," "Joy," "Happiness," "Friendship," "Smiles," and "Health." The printed sentiment reads "Many wishes to you for a truly memorable year. Happy Birthday," and is inscribed "Thanks for your assistance. Larry." Frahm thought it a strange note and had no idea what "assistance" Jordan meant. Frahm was "sick and tired of unwanted contact from a person who had been told time and time again to leave [her] alone and [she] wanted it to end." She notified the College of the latest card from Jordan, and the District decided to dismiss Jordan upon it superintendent's recommendation. Jordan was notified of that decision on September 8, 1994.

Meanwhile, Frahm moved from her home where she had been receiving birthday cards from Jordan. Frahm believes that Jordan "somehow" found out about her move and tried to "track [her] down" and discover her new address. On September 13, 1994, he mailed an empty envelope to her previous address and marked it "DO NOT FORWARD. Address correction requested." Frahm sought and obtained a court order closing her voter registration records to prevent Jordan from learning her new address.

Frahm testified that she felt that her safety "is threatened now on a continual, regular basis." She characterized Jordan's conduct as sexual harassment and explained that it affected her work environment at the College. She was hesitant to attend faculty meetings at the College, and missed some, because Jordan would stare at her. In order to attend a two-day meeting in which Jordan was known to be participating, Frahm was accompanied the entire time by a male administrator who acted as a "body guard." While on campus, Frahm felt that she had to constantly look over her shoulder to make sure Jordan was not following her. She described an incident during the summer semester of 1993 when she jumped behind a tree and ran from car to car to avoid confronting Jordan who was walking nearby. Frahm also described Jordan's habit of walking past her open office door, even though his office was in another building across campus.

A College administrator testified that Jordan's conduct upset Frahm and made Frahm reluctant to come to campus. The administrator also said that Jordan's conduct was

intimidating, hostile and disruptive of "the educational process." The District superintendent testified that the District felt an obligation to maintain a comfortable, open environment on campus and a legal responsibility to prevent sexual harassment. An expert on sexual harassment testified that sexual harassment is present if the harassment is based on the victim's gender, even if not provocatively sensual in nature. The expert also said that conduct outside the work place may constitute sexual harassment in employment if the offensive conduct is related to or linked to the work place.

At the hearing, Jordan admitted acquiring Frahm's street address from voter registration records and making recurrent unwelcome contacts to Frahm for four years, over the District's pleas to stop. He also admitted knowing, beginning in 1990, that Frahm was complaining about his conduct to the College and that, at least by 1992, she thought him "a pain in the butt." Jordan explained that he believed his constitutional right to free expression entitled him to contact Frahm and that his repetitive contacts allowed him to challenge the District's position that it could demand him to end those contacts. Jordan testified that Frahm was "a means to an end;" the end being to establish his constitutional right of free expression.

2. The evidence supports the findings of sexual harassment, persistent refusal to obey applicable rules, and unfitness for service.

The administrative law judge found Jordan's constitutional explanation for his conduct toward Frahm "unpersuasive," since Jordan had long been pursuing judicial redress for the perceived violation of his right of free expression and had no need to continue contacting her to preserve that action. He found that Jordan's "obsessive conduct defies logic" and constituted sexual harassment by creating an intimidating work environment. The administrative law judge also found that Jordan's conduct demonstrated persistent refusal to obey governing laws and regulations and unfitness for service.

These findings are supported by the weight of the evidence as described in detail above. Jordan harassed Frahm by a persistent refusal to respect her requests to be let alone, ferreting out her street address from government records and intruding into every birthday for four years with unwelcome cards. The harassment was sexual harassment, since Jordan initiated it when Frahm refused to date him again and inaugurated his communications with a Valentine's Day card professing his love for her. The first birthday card, too, bears an obvious reference to Frahm's rebuff with its stated wish that Frahm "find who/what you want in life." It is true that the

birthday cards were facially innocent. But "[s]exual harassment does not necessarily involve sexual conduct. It need not have anything to do with lewd acts, double entendres or sexual advances." (*Accardi v. Superior Court* (1993) 17 Cal.App.4th 341, 345.) Clearly, Jordan does not behave similarly in commemorating the birthdays of his male colleagues. The administrative law judge rightly concluded that the obsessiveness and intrusiveness of Jordan's fixation on this birthday card campaign reasonably intimidated Frahm.

While the cards were not delivered at the work place, there was sufficient evidence that Jordan' conduct in staring at Frahm at faculty meetings and roving past her office extended to the campus and the entire "concerted pattern" of his conduct created an offensive work environment. (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 610.) Jordan's conduct is not absolved by the fact that he did not limit his activities to campus. A work place sexual harasser's wrongful conduct is not mitigated by encroachments into the victim's private life.

Finally Jordan's claim that the District is without authority to discipline sexual harassment is plainly wrong. An employer apprised of sexual harassment among its employees must "take immediate and appropriate corrective action," and "all reasonable steps to prevent harassment from occurring." (Gov.Code, § 12940, sub. (h)(1).) Jordan ignored the District's [sic] numerous directives to stop his harassing conduct, thus establishing a persistent refusal to obey applicable laws and regulations. (§ 87732, subd. (g) [now, subd. (f)].) Jordan's obstinate and offensive conduct also evidenced unfitness for service. (§ 87732, subd. (e)[now, subd. d]; see *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229 [factors generally relevant to unfitness].)

B. There was No Deprivation of Due Process.

In addition to challenging the sufficiency of the evidence supporting his dismissal, Jordan also claims he was denied various procedural rights and protections. We are satisfied that due process was afforded Jordan.

1. Notification of dismissal decision.

The District received recurrent complaints of harassment from Frahm and urged Jordan on four separate occasions from spring 1990 to August 1993 to stop his unwelcome communications, and escalated the penalty for noncompliance

from censure to increasing periods of suspension.[7] Jordan remained intransigent, and the District's governing board resolved to dismiss him on September 8, 1994, upon the superintendent's recommendation following yet another complaint of harassment from Frahm.

Jordan received prompt notification of the decision to dismiss him, including a detailed statement of charges, advisement of his right to object, and a copy of relevant statutes. (§ 87672.) Jordan is familiar with legal notice, having been a practicing lawyer for years until his disbarment in Oregon. The District's statement of charges fully described Jordan's harassment of Frahm and explained that his conduct constituted "evident unfitness for service" and "persistent violation of or refusal to obey" school laws of the state and District board regulations, both of which provide grounds for dismissing tenured faculty. (§ 87782, subds. (e) and (g) [now subds. (d) and (f)].)

2. Performance evaluation.

Jordan complains that the District board dismissed him without first evaluating his teaching competency. It is true that the Education Code provides for dismissal upon satisfaction of certain grounds, including the District board's consideration of a performance evaluation. (§ 87671.) However, it is not clear that the board neglected to consider an evaluation of Jordan's performance. A February 1993 performance evaluation was presented with other documents at the administrative hearing to establish the District proceeded lawfully, so it may be that the evaluation was presented to the District board before it resolved to dismiss Jordan. Jordan has not proven to the contrary on appeal, and has failed to explain the presence of the evaluation in the record. In any event, Jordan's teaching competency was irrelevant to the board's resolution, which dismissed him for unfitness for service and persistent violation of rules because of his sexual harassment of Frahm.

3. Notification of administrative hearing.

The District honored Jordan's request for an administrative hearing to dispute his dismissal and advised him in November 1994 that a hearing was set for February 21-23, 1995 in San Rafael. The District personally served Jordan with a second notice on February 16, 1995, changing the hearing location to a different San Rafael office. Jordan argues that notice was inadequate because administrative procedures

[7] Jordan challenged the suspensions as violative of certain Educational Code mandates, and the District was ordered in late 1993 to comply with those mandates in the future. But the suspensions were not found invalid and, in any event, any procedural errors attending the suspensions did not lessen their effect in notifying Jordan of the inappropriateness of his conduct.

require that all parties receive notice of the hearing "at least 10 days prior to the hearing." (Gov.Code, § 11509.) The argument fails because Jordan received the original notice almost three months before the hearing and the amended notice served five days before the hearing changed only the location of the hearing within San Rafael.

While administrative procedures mandate at least 10 days advance notice of the hearing to apprise all parties of the time, place, and nature of the proceedings, it is not clear that a minor change in the place of the hearing requires an equivalent period of advance notice. (Gov.Code, § 11509.) We have held that a continuance of an administrative hearing to be held in a different city does not require satisfaction of the statutory notification standard, and found it sufficient that the interested party was informed at an administrative board meeting in Los Angeles that the matter was continued until a later Sacramento board meeting and had actual knowledge of the precise date at least three days before the hearing. (*McPheeters v. Board of Medical Examiners* (1947) 82 Cal.App.2d 709, 711-712, 715.) Here, Jordan was formally notified of the date, time, place and nature of the administrative hearing well in advance and only the place was changed shortly before the hearing. The change in location was minor, from one office to another within the same city, and Jordan had actual knowledge of the change five days before the hearing. Jordan appeared at the hearing and made no claim there, or here, that he suffered any prejudice by the change of location. On these facts, we find no deprivation of due process or the intended protections of the administrative rule.

4. Discovery.

Finally Jordan says he was denied discovery opportunities. California community college employees in administrative proceedings have discovery "rights and duties" equivalent to civil action litigants in addition to discovery rights granted under administrative procedures. ( 87679; Gov.Code § 11507.6.) Jordan availed himself of his civil discovery rights by propounding interrogatories, a request for admissions and a request for production of documents by mail service on December 24, 1994. Second requests for production of documents and admissions were served by mail on January 5, 1995. A response to the first request for production of documents was due January 18, 1995, a response to the second request for admissions was due February 9, 1995, and the other three discovery responses were due January 30, 1995. [sic] (Code Civ. Proc. §§ 1013, subd. (a), 2030, subd. (h), 2031, subd. (h), 2033, subd. (h).)

Jordan also requested discovery under administrative procedures on December 24, 1994. (Gov. Code, § 11507.6.)

That request was untimely since it was not made within 30 days after service of the District's statement of charges mailed on September 8, 1994, nor within 15 days after service of the District's amended statement of charges mailed on November 23, 1994. (Gov. Code, § 11507.6.) Accordingly, no response was due to that request for discovery.

On January 30, 1995, Jordan petitioned the superior court to compel the District to respond to all outstanding discovery requests.[6] Since only one of the five properly propounded discovery requests was due for response before January 30, 1995, Jordan's petition was largely premature. Also, Jordan made no attempt to resolve the discovery problem by conferring with the District, as local court rules encourage. (Marin County Superior Court Rules, Rule 3.14(A).) A discovery hearing was set for February 16, 1995. The District responded to all civil discovery requests before the hearing. Responses were mailed on February 10, 1995, and received by Jordan three days later. The District opposed Jordan's effort to compel discovery or impose sanctions, explaining that it had failed to respond earlier because it's counsel had not realized that community college employees were entitled to civil discovery in addition to administrative discovery. The trial court found that the District had not acted in bad faith and ordered the matter off calendar since the District fully complied with its discovery obligations by the time of the hearing.

The trial court's resolution of the discovery dispute was proper. The court was entitled to excuse the District's belated discovery responses and the delay in response worked no prejudice upon Jordan. He received the District's response sufficiently in advance of the administrative hearing, and discovery was completed "prior to one week before the date set for hearing." ( 87679 Jordan was given all due process.

## II. DISPOSITION

The order denying a petition for writ of administrative mandate is affirmed.

Strankman, P.J.

We concur:

[6] Jordan failed to present his requests for admissions to the trial court when he petitioned to compel discovery responses. (Code Civ. Proc., § 2033.)

Dossee, J.

Swager, J.

First Appellate District, Division One, No. A072322
S055256

IN THE SUPREME COURT OF CALIFORNIA

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LAWRENCE W. JORDAN, Appellant

v.

GOVERNING BOARD OF MARIN COMMUNITY COLLEGE DIST., Respondent

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The time for granting or denying review in the above cause is hereby extended to and including October 31, 1996, or the date upon which review is either granted or denied.

SUPREME COURT
FILED
SEP 20 1996
Robert Wandruff Clerk

Chin
Acting Chief Justice

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Petition for review DENIED.

GEORGE
Chief Justice